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The current state and the history of the Law & Economics movement in Poland

Stan obecny i historia ruchu Law & Economics w Polsce

Streszczenie

Niniejszy artykuł omawia historyczny i obecny stan ruchu Law & Economics (L&E) w Polsce. Przedstawiono polskie doświadczenia i wkład w pierwszą falę L&E. Dokonano szczegółowego przeglądu drugiej fali L&E i zasugerowano dalszą stratyfikację: wczesna adopcja w latach 1980–1990, popularyzacja lat 2000 i dojrzałe L&E od 2010 roku. W artykule omówiono różne działania w ramach ruchu L&E, takie jak prawdopodobnie pierwszy polski artykuł opisujący amerykańską ekonomiczną analizę prawa, założenie Polskiego Stowarzyszenia Ekonomicznej Analizy Prawa w 2005 r., różnorodność czasopism prawniczych i ekonomicznych oraz szeroki zakres tematyczny prac naukowych. Przegląd wybranych artykułów i książek z zakresu L&E ma na celu zaprezentowanie aktualnego stanu badań nad L&E w Polsce, z wyszczególnieniem prawa cywilnego, karnego, konstytucyjnego, behawioralnej ekonomicznej analizy prawa oraz zagadnienia efektywności judykatury. Przeprowadzona analiza pozwoliła na sformułowanie wniosków, zgodnie z którymi – pomimo przeciwwskazań historycznych – L&E rozwija się w Polsce dynamicznie.

Słowa kluczowe: ekonomiczna analiza prawa, Leon Petrażycki, polityka prawa, ekonomia polityczna, efektywność.

JEL: B29, K00, K14, K15, A12

Abstract

This article discusses the historical and current state of the Law & Economics (L&E) movement in Poland, describing Polish experiences and contributions to the first wave of L&E. The second wave of L&E is thoroughly reviewed, and further stratification is suggested: early adopters in 1980–1990, the popularization in 2000, and the mature L&E from 2010 onwards. The article discusses various activities within the L&E movement, such as the first Polish article investigating the American economic analysis of law, the foundation of the Polish Association of Law & Economics in 2005, the multitude of legal and economic journals, and the wide range of topics covered by academic works. A review of selected papers and books within L&E is provided to present the current state of L&E research in Poland, focusing in particular on civil, criminal and constitutional law, behavioral L&E, and issues relating to the effectiveness of the judiciary. The conducted analysis allowed us to formulate conclusions indicating that despite contraindications, L&E is developing rapidly in Poland.

Keywords: Law & Economics, Leon Petrażycki, legal politics, political economy, efficiency.

JEL: B29, K00, K14, K15, A12



1. Introduction

The Law & Economics (L&E) movement emerged in Poland as early as the 1980s, and an abundance of research was conducted in the 21st century. However, Polish contributions have remained mostly unexplored by the larger international audience. Notably, there is no section on Polish L&E in the seminal *Encyclopedia of Law and Economics* (De Geest & Bouckaert, 2000). Hitherto, Polish contributions to the international L&E movement have been described in only a few papers. Most of them focused on historical input rather than on reviewing the contemporary literature. This article is probably the first to strive to combine those two tasks. Additionally, we systematize the evolution of the L&E movement in Poland. This is much needed, since L&E publications were virtually non-existent 30 years ago.

Today:

- there are multiple original works published each year;
- there is a thriving Polish Association of Law & Economics, which regularly organizes conferences;
- L&E master studies are offered at the largest business school in Poland, and much more.

Previous reviews of L&E in Poland have either covered a limited timespan (Bełdowski et al., 2011) or been written in Polish (Bełdowski & Metelska-Szaniawska, 2011; Bełdowski et al., 2024, Chapter 1). One should mention in particular the article *Law and Economics in Poland – the Past and Present* by Jarosław Bełdowski, Katarzyna Metelska-Szaniawska, and Louis Visscher (2011) published in the *Polish Yearbook of Law and Economics*. In another paper published in the *Polish Yearbook of Law and Economics*, Bełdowski & Metelska-Szaniawska (2015) briefly recounted the history of the Polish Association of Law and Economics (*Pol. Polskie Stowarzyszenie Ekonomicznej Analizy Prawa – PSEAP*).

This article is structured as follows. First, there is a description of the roots of simultaneous thinking on legal and economic matters in Poland, which may be linked to the first wave of L&E. We focus particularly on joint scientific activities, such as conferences and journals, and the crucial role of Leon Petrażycki in Polish legal thought. Then, we proceed to the history of the second wave of L&E in Poland, beginning with its initial reception in the 1980s. In section 4, we present an overview of the research within L&E in Poland, with special emphasis on civil law, criminal law, constitutional law, behavioral L&E, judicial effectiveness, and Regulatory Impact Assessment (RIA). We introduce selected studies from other areas due to their originality. Section 5 contains a review of obstacles to the widespread adoption of L&E by Polish legal and economic scholars. Section 6 concludes the paper.

Most of the cited works by Polish authors were written in Polish (which does not mean they are only interesting to Polish readers). Any publications in English are specifically mentioned.

2. The first wave of L&E in Poland

Poland's loss of independence at the end of the 18th century and the partitions that existed until 1918 posed a profound challenge to the development of innovative legal and political concepts. While this period significantly hindered the continuation and evolution of Poland's legal tradition, as well as the reform and improvement of political and economic institutions – shifting the focus instead toward resistance against foreign legal solutions or their interpretations that enabled survival under occupation – it also introduced opportunities for intellectual growth. The partitions of Poland of 1772, 1793, and 1795 not only resulted in the loss of independence for one of Europe's largest countries, the division of its territory between three invaders: Russia, Prussia, and Austria, and the collapse of the idea of a common legal framework from the Polish-Lithuanian Commonwealth (Lerski, 1996, p. 291). It also exposed Polish society to different socio-economic systems. The necessity of assimilating and often concurrently applying foreign legal frameworks – especially when conducting economic activities across the former Commonwealth's territories – provided new knowledge and familiarity with Western codifications, such as the Napoleonic Code, the Austrian ABGB, and the German BGB. This exposure ultimately prepared Polish lawyers for comparative legal studies and the analysis of diverse legal systems, fostering a broader perspective amid the adversities of subjugation (Tokarczyk, 2005, p. 9; Tokarczyk, 1987, p. 385). Moreover, even after Poland regained independence, after World War I, patriotically inspired authors, emphasizing the need to unify the Polish legal system, were skeptical about the legislative achievements of pre-partition Poland, arguing that the legal structures of that time were ill-suited to the socio-economic reality of the 19th and 20th centuries (Glass, 1922, p. 250).

During the *era of codification*, when other European countries created uniform laws (including the French *Code civil des Français* of 1804, the Austrian *Allgemeines Bürgerliches Gesetzbuch* of 1811, the German *Bürgerliches Gesetzbuch* of 1896, and the Swiss *Zivilgesetzbuch* of 1907) implementing rationalist Enlightenment ideas¹ and adapting legal institutions to contemporary socio-economic conditions, various foreign legal solutions were imposed on Polish society. *With the Polish partition and the loss of the independence also the original Polish legal system and tradition disappeared. It has been replaced by various legal systems. On the Polish territory (within the borders which has been fixed in the period between the great wars) there were five legal systems in force: German, Austrian, French, Russian and Hungarian. With the regaining of the independence in the year 1918 the unification of the law was one of the important agendas in order to unify the divided country* (Zoll, 2014, p. 126-127).

Despite these unfavorable circumstances, it is necessary to mention the joint congresses of Polish economists and lawyers: the first one was held in Kraków in 1887 and gathered over 350 participants (during which nine papers were presented on law and three papers on economic issues), the second congress was held in Lwów

¹ These ideas included the foundations of a capitalist free market economy, economic concepts of ownership, other property rights, marital property regimes, etc.

(Lviv) in 1889 (during which legal and economic sections were established), and the third congress in Poznań in 1893. During the next congresses (in Warsaw in 1906 and Lwów in 1912), numerous legal and economic issues were again discussed, and selected papers were subsequently published in a volume of the *Law and Economics Journal* (*Czasopismo Prawnicze i Ekonomiczne*) (Bełdowski et al., 2024, chapter 1). It was only the regaining of independence following World War I that enabled the application of previously developed concepts and the commencement of codification work².

2.1. Leon Petrażycki

Although the issues of legislative work and expert and scientific activity in the areas of law and economics in the period of the *Second Polish Republic* (interwar period 1918-1939) are very widely discussed in Polish and foreign literature, it is necessary to highlight the activity of Leon Petrażycki. This scholar tends to be presented as the Polish forerunner of L&E (Giario, 2018, p. 135-140). Others view him as a predecessor of behavioral L&E (Zyzik, 2017, p. 21-33), one of the fathers of the sociology of law (Deflem, 2008, p. 363), the creator of the psychological theory of law (Grajales et al., 2023, p. 37-41; Giario 2020), and the author of the concept of scientific legal policy, comparable today to the RIA procedure (Koźmiński et al., 2024, p. 7).

From the scientific side, Petrażycki (lecturer at the University of St. Petersburg in the years 1907-1917 and the University of Warsaw after the Bolshevik Revolution in Russia in 1917) demonstrated the connections between law and economy, emphasized the need to adapt legislation to socio-economic conditions, and developed legal analyses around concepts such as income, property, ownership, commercial companies, fruits and costs (Petrażycki, 1892; Petrażycki, 1893; Plisiecka, 2011).

According to Petrażycki, emotions play a decisive role in evaluations by generating impulses leading to positive assessments or repulsion responsible for negative ones, making judgments self-contained yet relativized to these impulses; when verbalized, such statements are projections of experienced emotions. He identified ethical emotions, where a sensation – typically concerning an action – results in a sense of duty alone (moral experience) or duty combined with entitlement (legal experience), correlating imperatives with attributions. Thus, law is a collection of imperative-attributive experiences, while morality consists solely of imperative ones, forming a psychologicistic conception where phenomena like law exist within the human psyche (Woleński, 2018, p. 381).

Furthermore, it is necessary to mention the concept of legal politics (*polityka prawa*, sometimes called also *politics of law*). In short: legal politics, initiated by Leon Petrażycki (1867-1931) and continued later by Adam Podgórecki (1925-1998), should enable prediction, in a scientifically justified manner, of the consequences

² One should particularly mention the Polish Penal Code from 1932, the Polish Code of Obligations from 1933, the Polish Commercial Companies Code from 1934, and the Law of Bills of Exchange from 1936 (which still remains in force). Despite the partitions, Polish lawyers were well equipped to draft original legal acts when independence was regained.

of enacting certain legislation, and the devising of legislation that would yield the desired effects (Gizbert-Studnicki et al., 2016, p. 548-585). Legal politics is based on the view that law is a social phenomenon (in contrast to positivistic imagination that legal norms belong only to the sphere of 'duty' or 'ought' – such as the Kelsenian *sollen*, independent and separated from *sein*), part of *real existence*. The concept of legal politics is based on the idea that effective law can be established only after determining, using empirical research methods, the real circumstances (such as the current social situation, economic conditions, psychological factors, social emotions) that may affect the application of the law. Therefore, good law-making requires knowledge about socio-economic facts. Before legislative drafting, sociological analysis is needed to provide answers to the questions: which social problems require the intervention of the legislature?, 'how to improve community life and solve social problems?', which socio-psychological factors determine the conduct of citizens?. Numerous similarities can be seen between these assumptions and the conclusions of Anglo-Saxon legal realism and L&E. However, while the concept of legal politics remained mostly a theoretical idea, L&E evolved into a thriving movement of both theoreticians and empiricists³.

2.2. Common journals for lawyers and economists

At the time of the first wave of the L&E movement, Polish scholars, perhaps intuitively, were undertaking projects that connected economic and legal matters. The prime example is the joint congresses mentioned above. Other important ventures were academic journals. Probably the first Polish journal to combine legal and economic threads was the *Law and Economics Journal* (Czasopismo Prawnicze i Ekonomiczne), established in 1900 (and published until 1945) in Kraków by authors associated with the Jagiellonian University and the Society of Lawyers and Economists in Kraków. Later, the Poznań *Journal of Law, Economics and Sociology* (*Ruch Prawniczy, Ekonomiczny i Socjologiczny – RPEiS*) was established in 1921. At first, only articles on economics and legal sciences were accepted. From 1925, the journal broadened its scope to include sociological matters. The RPEiS was published quarterly until the outbreak of World War II, and then from 1958 regularly until today (Smolak, 2016). Interestingly, in 1928-1931, a joint venture was undertaken by Polish lawyers and economists, and a bilingual (English and German) journal on economic and legal matters was published, the *Review of Polish Law and Economics – Zeitschrift für Polnisches Recht und Wirtschaftswesen*. Even though its aim was to familiarize international readership with the current situation in Poland, rather than publish original research, it highlights the awareness of Polish academics and professionals of a need to approach legal and economic matters jointly.

In 1968, another journal combining legal and economic matters was introduced, *Studies in Law and Economics* (*Studia Prawno-Ekonomiczne*). It was founded as a platform to share the research and opinions of scholars in these two disciplines.

³ However, there were several attempts by Polish scholars to place legal politics in the spotlight of international legal research, e.g., (Biernat & Zirk-Sadowski, 2008).

However, the journal is divided into two distinct parts, legal and economic. Thus, it does not foster L&E research but rather advancements in distinct disciplines.

Today, there are at least a few magazines that combine economic and legal perspectives, for example *Legal and Economic Review (Przegląd Prawno-Ekonomiczny)*, *Ekonomia i Prawo. Economics and Law*, and *Wroclaw Review of Law, Administration & Economics*. Moreover, from 2011 to 2016, the *Polish Yearbook of Law & Economics* was published. It was an initiative of the Polish Association of Law and Economics, which is discussed further in the article. A substantial number of papers cited here were published in those yearbooks.

3. Contemporary Law & Economics movement

3.1. The initial reception of L&E

Probably the first work in Poland which can be connected to L&E in its second wave (i.e., after the seminal publications by Coase, Calabresi, and Posner) was published in 1982 by Wiesław Karsz – a legal scholar from the University of Łódź. His publication introduced the basic concepts of L&E and provided examples of their application across selected branches of the law. His first work was strongly focused on American L&E, since this discipline or program was not yet a part of Polish scholarship. Interestingly, he mentioned the three most popular objections to L&E: the unrealistic assumptions of rational choice theory and, by extension, of economics; ideological bias; and the disqualification of values other than efficiency, such as justice. He disagreed with all three of them (Karsz, 1982, pp. 79-81). In his two subsequent articles, Karsz further explored two important concepts: externalities (Karsz, 1987a) and the Coase theorem (Karsz, 1987b).

In 1992, Barbara Szamota published a paper on the economic theory of crime. She cited mostly American L&E scholars (Gary Becker, Richard Posner), as well as sociologists (Isaac Ehrlich) and economists (Paul Samuelson, William Nordhaus). Szamota (1992, p. 48) identified the main advantages of the theory as the focus on criminals' rational decision-making and the precision of the model.

At that time, economic scholars familiar with international trends in science were aware of L&E (e.g., Balcerowicz, 1993, p. 8). However, this research program/discipline was yet to be popularized.

3.2. The first decade of the XXI century – the rise in recognizability

In 2002, Rafał Stroiński finally brought economic analysis of law into the Polish academic public eye. His article reintroduced L&E into the field of civil law, using examples from the Polish Civil Code. Stroiński also assessed the feasibility of using L&E in Europe. He stated that L&E may be utilized for all efficiency-related provisions (2002, pp. 580–581). The following year, Stroiński (2003) authored the chapter on L&E in a textbook on economics, directed at lawyers and other social scientists without an academic background in economics. In this work, he presented the uses

of L&E beyond the civil law context. Stroiński (2004) focused on how L&E could be applied to commercial law. Stroiński (2005) analyzed a new provision in the Polish Commercial Companies Code (Kodeks Spółek Handlowych) regarding the possibility of the owner issuing orders to the firm's manager from the L&E perspective. In the meantime, Pawłusiewicz & Brożek (2002) published some theoretical critical remarks on the economic analysis of criminal law.

Further development of research on L&E in Poland occurred very quickly. In 2004, an inter-university team of lawyers, coordinated by scientists from the Jagiellonian University, received a grant for *Economic Analysis of Law* (Ludzie Nauka, 2025). Among the outcomes of the research grant were the scientific seminar in Kraków, *Economic Analysis in Legal Applications*, and subsequently the publication of two books. One of them was intended as a general introduction of L&E into Polish scholarship – *Dziesięć wykładów o ekonomii prawa (Ten lectures on the economics of the law)* (Stelmach et al., 2007). Unfortunately, the authors oftentimes treated the established L&E research in the international literature as directions, offering rather their personal perspective on how the economic approach to law may be beneficial for lawyers (*ibid.*, p. 17). Additionally, they caused some confusion in the semantics of L&E, describing it as a school (*ibid.*, p. 11), a movement, or an *economic trend in contemporary philosophy* (*ibid.*, p. 17). Having pointed out the book's shortcomings, it is worth noting that the authors greatly contributed to the popularization of L&E among Polish lawyers and, more generally, to the use of economic reasoning in law. The book was cited 165 times on February 1, 2025 in Google Scholar, a remarkable number given the relatively small (yet still growing) circle of L&E scholars in Poland.

The other book which was financed using the aforementioned grant was a monograph comprising nine separate articles on L&E by legal scholars. The authors wrote on topics such as the instrumentalization of law (Bator, 2007), the role of judges in reforming statutes (Stawecki, 2007), and the relation of L&E to liberal legal thought (Kaczor, 2007). In his chapter, Gromski (2007) tried to picture L&E as a legal politics theory. His proposition was not widely acclaimed in the Polish literature but should be mentioned here as an example of the early reception of L&E, which tried to integrate the *new* concepts into older ideas of legal politics. In two chapters, the authors applied L&E to specific branches of law: criminal law (Brożek, 2007) and EU law (Golecki & Wojciechowski, 2007).

The works, particularly interesting from that period, regarding the evolution of the L&E movement in Poland, pertain to the early history of this research program/discipline in Poland. The global history and intellectual antecedents of the L&E movement were discussed by Boehlke (2005), while Boberek & Czyżowicz (2007) described the L&E movement, emphasizing its methods and the concept of (good) regulation. They noted that at the time of writing, only two universities had active research units in L&E: the Jagiellonian University in Kraków and the University of Warsaw⁴. Bełdowski & Metelska-Szaniawska (2007) offered a more

⁴ Authors note that according to their best knowledge, at the time there were active L&E scholars affiliated with the Warsaw School of Economics as well.

in-depth analysis of L&E, describing its roots and forerunners, main schools, and basic concepts. They also theorized on the future of the L&E and briefly described Polish experiences in the topic.

The publication of the translated textbook by Cooter & Ulen should be regarded as the final step in popularizing L&E methods, approaches, and views in Poland. The textbook was published in 2009, with the second edition issued two years later (Cooter et al., 2011). This almost 700-page volume enabled a broad academic audience to learn about L&E in depth. This canonical textbook contains the general introduction to microeconomic concepts, the same as for legal matters. Further chapters include the L&E perspective on contracts, torts, compensation, lawsuits, criminal activity, and more.

3.3. The Polish Association of Law and Economics

Simultaneously with the growing body of L&E literature, the L&E movement in Poland was consolidated in an organizational sense. The Polish Association of Law and Economics, or PSEAP, was founded in 2005 in Warsaw by 15 scholars, PhD students, and practicing lawyers. The legal process for the initialization and registration took almost a year but was successful (Bełdowski & Metelska-Szaniawska, 2015, p. 145). The founding members, in alphabetical order, are listed in appendix 1. Rafał Stroiński, a lawyer and former scholar from the University of Warsaw, served as the first PSEAP President (2005-2009).

Since 2010, PSEAP has organized an international Polish L&E conference. This is a forum for Polish and international scholars to share ideas and present recent research using the L&E perspective. As a supplementary activity to the conference, the Best Student Paper Prize is awarded to the authors of the three best papers in L&E who are undergraduate or master's students. It serves as a tool to popularize L&E among very young yet promising researchers. Furthermore, PSEAP organizes scientific seminars, usually three times a year. Between 2011 and 2016, the association published the Polish Yearbook of Law and Economics. The publication was usually a follow-up to the conference and contained the extended versions of the research presented therein.

3.4. The mature L&E movement in Poland

From around 2010 onward, the L&E movement in Poland began to mature. Many scholars had written articles or chapters on the topic and, at least vaguely, understood the principles of L&E. Various works contained a theoretical description of basic concepts and tools, such as rational choice theory, Pareto efficiency, Kaldor-Hicks efficiency, and externalities. There was a functioning Polish Association of Law and Economics, further popularizing the movement. On top of that, Polish readers had access to a fresh translation of the acclaimed textbook on L&E. From 2010 onwards, no more general introductions to L&E were needed; rather, applications of the theory to real-life legal problems were. In the next chapter, we present selected works grouped in a few categories.

4. Present research

Even though L&E research in Poland is less prominent than, for example, legal positivism or macroeconomics, several papers (and books) have been published over the last 25 years. While this article is not intended to cite and summarize all of them, we focus on certain selected works. We grouped them into the sections of civil law, criminal law, constitutional law, behavioral L&E, judges' motivation and effectiveness, RIA, and miscellaneous works. However, there are also other research areas within Polish L&E. They include labor law (see Raczkowski, 2015; Lewkowicz, 2018a; Lewkowicz, 2019), financial and accounting law (e.g., Kantorowicz, 2015; Nieborak, 2016; Podhalicz, 2018; Kempniński, 2018; Szyszka, 2022), human rights (e.g., Semeniuk, 2009; Ratajczak, 2012), international law (e.g., Kenig-Witkowska, 2015; Guzik, 2018), regulation in a broader sense (Boberek & Czyżowicz, 2007; Nagaj, 2012; Bystranowski, 2014; Kabza, 2014), and more.

4.1. Civil law

Research on L&E in the context of civil law has been the most fruitful among all the legal branches (comparable with criminal law). The most studied issue was the general applicability of L&E to the Polish Civil Code and selected regulations, such as tort liability. In addition, it is the only legal branch for which a comprehensive textbook-like publication in Polish has been published: *Economic Analysis of Civil Law. Volume 1. General Issues and Contract Law* (Pol. *Ekonomiczna analiza prawa cywilnego. Tom 1. Zagadnienia ogólne i prawo umów*; Bełdowski, 2024). This is a Polish updated edition of an earlier foreign monograph by Hans-Bernd Schäfer and Claus Ott (in the Polish version co-authored with Jarosław Bełdowski), originally titled *Lehrbuch der ökonomischen Analyse des Zivilrechts*. The volume was divided into two parts. The first one covers introductory topics on L&E in the area of civil law, as well as in general. The second one is devoted to contract law. Overall, the publication is the most comprehensive monograph on civil law from an L&E perspective in Poland. It is not a mere translation of the German version, but to a significant extent an original work adapted to Polish conditions, experiences, and legal provisions. Other publications summarized in this section are articles with a much more limited scope than the aforementioned book.

The applicability of L&E to Polish civil law is an issue that divides Polish lawyers. While some argue that it may be greatly useful and even give examples of the provisions naturally prone to economic interpretation, such as articles 144, 222, and 415 of the Polish Civil Code (Stroiński, 2002, pp. 566-576), others are much less optimistic and warn against wide and “uncritical” use of L&E in civil law (Olechowski, 2015). Nonetheless, selected studies analyze provisions of the Polish Civil Code from the L&E perspective⁵.

Gintwont (2011) published a theoretical article (in English) about the implied warranty in the Polish Civil Code. The implied warranty (Pol. *rękojmia*) is described

⁵ Recently, also a civil procedure has been studied using an L&E framework (Kopacki, 2023)

in article 556 and subsequent articles of the Civil Code. The Gintwont argues that the rationale for this regulation is the asymmetry in information between the seller and the buyer. Although the argument may seem obvious, the author clearly explains how the implied warranty increases economic efficiency; therefore, his work is interesting from the L&E perspective.

Stroiński (2015) analyzed the nature and effectiveness of a contractual penalty (article 484 of the Polish Civil Code). The provision itself should reduce transaction costs and increase predictability. The parties to the agreement modify their expected outcomes: either the contract will be enforced and the party will benefit by A1, or the contract will be broken and the party will receive the penalty of A2. Thus, the parties to transactions may easily calculate their expected gains from the contract and decide whether it is profitable to enter into it.

Baranowska (2012) wrote a paper on tort liability and compensation for damage from the L&E point of view. In her theoretical review, she discussed Calabresi's tripartite cost model, externalities, and the different economic outcomes of compensation rules. Winczura (2017) described how the L&E approach may be useful in three main tort categories: intentional tort, negligence, and strict liability. Luty (2012) also analyzed tort law. He argued in English that the Polish judiciary may adopt the L&E approach to tort law rather than rely on the existing provisions of the Civil Code. He begins his reflections by defining the terms *negligence* and *due care*, the latter introduced in article 355 of the Civil Code. From his point of view, the existing interpretation of these terms is vague, frequently outdated, and relies on the personal characteristics of the people involved. His alternative approach is based on the optimum between the magnitude of the possible injury and the cost of precautions. This rather standard analysis is well known among L&E scholars. The article, however, reviews selected cases from Polish civil courts in which judges used economic arguments in their reasoning. Thus, he shows that the L&E perspective need not be explicitly introduced through amendments to the Civil Code but may instead stem from a different interpretation of *due care* among legal scholars.

4.2. Criminal law

The L&E perspective on crime and its determinants is not a view shared by all Polish scholars (e.g., Rogacka-Rzewnicka, 2015; Żuk, 2021). However, the concept of the rational perpetrator taking into account alternative payouts or possible punishment for a crime has resonated in academic thought. The *economic model of crime*, as it is oftentimes referred to, is usually presented as one of a few plausible models of criminal behavior. Kądziołka (2014) explored the issue further and provided a theoretical review of various models of crime within L&E. Her study was extensively used as a reference in subsequent research. For instance, Szulc (2018) referred to it when developing a theoretical model (characterized in English) to explain the incentives for engaging in white-collar crime. Szulc's position is that the punishments for such misconduct must be proportional to the financial gain the perpetrator obtains. Other researchers note difficulties with the universal applications of L&E to criminal law. Porębski (2018) focused on the shortcomings of

using statistical evidence in criminal court proceedings. He did not disregard them in their entirety; however, he noted problems when the probability of a given deed is mixed with certainty

Florczak (2011) employed a macroeconomic approach to crimes committed in Poland. He wrote an article in English in which he identified and quantified the main factors driving crime rates in Poland for the years 1970-2005. His analysis builds on economic theories of crime and empirical models of crime, which consider several economic, social, and demographic factors, as well as the severity of punishment (the deterrence effect). He calculated the total social costs of crime (as numeraire, not in monetary value). His results, obtained via time-series regressions, suggest that lenient penitentiary policy and widening inequalities are the main drivers of crime in Poland.

Joński (2013) published an econometric study (in English) on the impact of the introduction of accelerated proceedings in criminal cases on the number of car accidents. He focused solely on driving a motor vehicle when intoxicated or under the influence of a substance. His hypothesis was that introducing a new type of proceedings (*24-hour courts*) should decrease crime rates, since not only the punishment but also the speed of sentencing may influence human behavior related to crime. Using standard OLS estimation, he concluded that, on average, the introduction of accelerated proceedings reduces the number of accidents caused by intoxicated drivers by about 27 per month.

Szczucki also presented interesting conclusions in his article comparing misdemeanor and criminal liability for theft (Szczucki, 2015). Statistical data revealed that in general, the perpetrator of the offence of theft of a more expensive item (which is a crime under the Polish penal code) is paradoxically in a *more favorable* procedural situation than the perpetrator of theft of a less valuable item (i.e., a misdemeanor). In the case of the former, the proceedings will probably be discontinued due to a low level of social harm. In this sense, misdemeanor law turns out to be much more *effective* in terms of protecting property than the seemingly more severe criminal law.

Lewczuk (2016) examined determinants of crimes, using data from 96 French departments over the years 2008 to 2011. Her study (in English) was inspired by the new French crime prevention policy, introduced in 2012. Lewczuk did not research whether the policy was effective or successful, but rather analyzed whether it was aimed at the root causes of criminal activities. Such an approach is not yet widely popular among Polish scholars, but one may call it an *ex-ante* policy assessment. At first, she introduced theoretical concepts, such as ecological theories of crime (strain theory, social disorganization theory, and the economic theory of crime, the most prominent), and presented a theoretical review of possible crime determinants. Then she outlined the basics of the new French crime-prevention policy. The core of her research involved an econometric model in which she empirically tested theoretical propositions about crime determinants. Even though only the percentages of young people in the population and of single-parent households among all households were found to be significant across all model specifications, her study is noteworthy for examining whether the legal measure targeted the underlying causes of the social problem.

4.3. Constitutional law

Polish scholars have been particularly active in constitutional L&E, providing both theoretical and empirical papers. Many of the works were published in English, with some co-authored by international partners. The constitutional L&E framework in those papers was oftentimes used in conjunction with public choice, constitutional economics, and political economy approaches⁶. Here, we do not try to disentangle the intricate differences in methodological approaches but rather provide a summary of existing research on constitutional law. At least four main research areas within constitutional L&E in Poland may be identified: general reflection on constitutional L&E, post-socialist constitutions, the Polish Constitutional Tribunal, and constitutional compliance. Given the very high number of original works published in this area, a separate review is required. The summary below presents only selected works based on the authors' subjective judgment.

Metelska-Szaniawska (2005, 2010) popularized constitutional L&E in Poland, initially placing her research within constitutional economy (which is indeed closely related to constitutional L&E). Fałkowski & Metelska-Szaniawska (2015) summarized research on constitutions from an economic perspective, offering a review of current theories and empirical results. They provided an introduction to the topic, presented various concepts for understanding constitutions (meta-rule, incomplete contract, commitment mechanism), discussed why constitutions are enacted (to tackle the time-inconsistency problem, to coordinate conflict resolution, to aggregate expectations about institutional order), and examined their stability. Lewkowicz & Metelska-Szaniawska (2016, 2019, 2021a) unraveled the differences between *de jure* and *de facto* institutions in the context of constitutional law – a distinction which is of utmost importance in contemporary constitutional L&E studies. Constitutional overperformance was studied by Metelska-Szaniawska & Lewczuk (2022). Their article in English showed that democratic regimes are more likely to uphold civil rights even if they are absent from their constitutions. Additionally, constitutional overperformance is associated negatively with political conflict and positively with the age of the constitution. Some evidence of spatial diffusion has also been identified.

Focusing on a specific provision of the Polish Constitution (Article 122(5)), Lewczuk (2025) analyzed presidential vetoes in Poland over the period 1997–2024, with the findings published in English. She found that cohabitation was the primary variable associated with the number of vetoes. Among other tested variables (including time until next parliamentary and presidential elections), only the president being in the first term in office was significant.

Research on post-socialist constitutions has received substantial scientific attention in Poland. Metelska-Szaniawska (2008) analyzed differences among the constitutions of various post-socialist states, how much they were observed, and how they were reformed. She researched the relationship between countries' constitutions and their

⁶ The papers in which the term *constitutional law and economics* emerged in titles were rather general in scope and on the introductory level (Siekiera, 2015; Skoczylas, 2017).

economic transformation away from socialism. Using both standard econometric techniques and a Synthetic Control Method (SCM), she reassessed whether the adoption of post-socialist constitutions influenced economic reforms. The findings reveal considerable cross-country variation in reform dividends, with positive effects for most countries. Crucially, the study identifies *de facto* constitutional court independence, rather than the concentration of power or constitutional rights, as the most consistent channel through which constitutions enhance credible commitment and foster economic reforms. The findings were considerably extended in an English-language book published by Metelska-Szaniawska (2016).

Metelska-Szaniawska (2021) further studied post-socialist countries and their constitutions, publishing the findings in English. She compared selected *de jure* and *de facto* rights and freedoms based on the wording of national constitutions and content of appropriate databases focused on factual liberties (e.g., freedom of expression, prohibition of torture, right to *habeas corpus*). Then, she calculated the *de jure-de facto* constitutional gap and found that larger gaps tend to reduce the effectiveness of the constitutional commitment mechanism. Democracy was found to be negatively associated with the size of the gap, while the presence of political conflicts was positively associated.

In their English-language study, Metelska-Szaniawska & Lewkowicz (2021) specifically focused on *de jure* and *de facto* civil rights protection in post-socialist states. Surprisingly, they found only negligible correlations between *de facto* performance and the *de jure* protections of rights in their constitutions. Only *organizational de jure* rights, such as freedom of association, seemed to matter for the *de facto* state actions. Similarly, Lewczuk (2021) researched civil liberties in post-socialist states. She wanted to investigate whether there are any spatial patterns in *de facto* civil rights protection. Her findings, published in English, indicate that spatial institutional diffusion indeed occurred among post-socialist states. Moreover, two spatial clusters have been identified: CEE and the former Yugoslavia countries, and the former Soviet Union states.

Describing the next main research area within constitutional L&E in Poland, one must acknowledge that several scientific works are centered around the Polish Constitutional Tribunal (CT). Joński (2020) examined it from the perspectives of political economy and L&E. Joński identified three distinct states in which the CT may be perceived and function within the European approach to the constitutional judiciary: an Arbitration Court, a Constitutional Chamber, and a Third Chamber of Parliament. The first one's objective would be to reconcile two distinctive political forces (e.g., post-socialist and liberal) when a crucial legislative act is being introduced. An Arbitration Court would be relatively independent of politicians, who value its impartiality, since it may promote their viewpoints even if they are currently in opposition. A Constitutional Chamber is an idealized concept in which the CT is fully independent of politicians and its rulings are highly valued and always promptly implemented. A Third Chamber of Parliament denotes a fully dependent tribunal, which is perceived as a body that needs to be controlled by the ruling party to seamlessly introduce new laws. Joński provides both narrative and quantitative arguments showing that the Polish Constitutional Tribunal was

functioning and was perceived by politicians as an Arbitration Court until around 2006. Then, the perception shifted towards a Third Chapter of Parliament, along with actions that subjugate the CT to a parliamentary majority.

Joński's claim may be supported by other empirical research. Pellegrina et al. (2025) examined the cases before the Polish Constitutional Tribunal from 2003 to 2023. Specifically, after 2015, judges appointed by the ruling majority were more likely to vote for legislation supported by the ruling majority. The authors noted that it was mainly due to changes in the composition of the CT, rather than to the evolution of existing judges' views. They published their results in English.

Kotalczyk (2016) analyzed one of the widely discussed cases faced by the CT, that is, the legality of banning ritual slaughter. The CT ruled that it was unconstitutional, violating the religious freedom guaranteed by article 53 of the Polish Constitution. Kotalczyk identified five stakeholders and four distinctive legal regulations regarding the matter. Then, by simulating utility gains and losses, he concluded that employing L&E methods may yield rulings different from those based solely on legal and moral arguments.

The other dominant topic in Polish constitutional L&E is constitutional compliance (CC), that is, the extent to which *the jure* constitutional rules are *de facto* enforced or guaranteed by the state. A Polish scholar was one of the coauthors of the novel *Comparative Constitutional Compliance Database*, which is being used worldwide to study the topic (Gutmann et al., 2024). Lewczuk & Metelska-Szaniawska (2025), utilizing this source, showed that lower constitutional compliance is associated with lower GDP per capita and published the results in English. Moreover, their results indicate that this relationship is particularly prominent for low- and lower-middle-income democratic countries. For autocracies, high-income, and upper-middle-income countries, the association is not that straightforward. Foreign direct investments (FDI) seemed to be a main transmission mechanism between constitutional compliance and economic outcomes. Lewkowicz et al. (2024b) empirically assessed how constitutional compliance may be related to polarization in both society and politics (and published the results in English). Notably, the negative association between a society's political polarization and CC has been confirmed and found to be more robust than that of polarization within a parliament itself.

Others focused on determinants of CC itself. Lewkowicz et al. (2024a) examined the relationship between the constitutional text and compliance with it in democratic countries and published their results in English. The authors initially hypothesized that three aspects of constitutions may be related to CC: polarity (more permissive or restrictive text), subjectivity (room for interpretation and discretion), and readability (ease of comprehension). Their initial results, obtained using both OLS and machine learning techniques, indicate that more concise constitutions tend to be complied with more fully. Moreover, they showed that polarity matters – the more emotionally negative words there were in a constitutional text (e.g., prohibitions and punishments) in a certain country, the higher the CC. The matter of readability was less clear, with polarity being rather insignificant. Interestingly, constitutions with Scandinavian legal origin and those amended more frequently seem to be complied with more.

Gutmann et al. (2024), in an English-language article, examined how political leaders' personal traits may influence the level of CC. They found that a leader's legal education is associated with higher levels of CC. While having a Western education increases CC, being generally educated abroad lowers the level of CC. Greater political experience of the leader seems to be slightly correlated with higher CC. Notably, being a member of an extreme-left party is associated with significantly lower CC. Leaders with military experience are also associated with lower CC. Moreover, democracies exhibit a higher level of CC than autocracies.

In another English-language study, Gutmann et al. (2025) focus on CC determinants. They hypothesize how culture can influence CC in the long term. They identify five distinct characteristics, which theoretically may be associated with the CC level: generalized morality (a measure of trust, tolerance, and respect towards others), individualism (contrary to collectivism), power distance (acceptance of inequalities in distribution of power), long-term orientation (how patient a society is), and Islamic influence in a country. Their empirical study, with extensive use of instrumental variables to address the endogeneity problem, confirmed that only individualism is conducive to higher CC, while having a considerable Muslim population lowers it. Power distance was associated with lower CC in most of the estimated models as well.

4.4. Behavioral L&E

Behavioral L&E is not a particularly flourishing branch of L&E research in Poland, but it is definitely interesting⁷. Many papers on the topic were written by Radosław Zyzik, who has published papers including a Polish introduction to the topic (Zyzik, 2018)⁸. Zyzik (2017) proposed framing the Polish jurist Leon Petrażycki as a forerunner of behavioral L&E. This argument was further developed in the monograph *Behavioral analysis of law. From Leon Petrażycki to Cass Sunstein*, in which he tried to permanently place Petrażycki as the iconic figure in behavioral L&E (Zyzik, 2021). Others have contrasted behavioral L&E with different approaches in legal thought. In a recent book, Bogucki (2023) examined different views on law expressed by proponents of behavioral L&E and supporters of the internal morality of law, as defined by Lon Fuller.

There have been a few contributions within behavioral L&E that explicitly emphasize practical applicability. Famulski (2017), for example, provided a behavioral L&E-based justification for selected legal provisions. He argued that measures such

⁷ Close to behavioral L&E is the use of neuroeconomics in law, as described by Małecka (2012) in English. She understands neuroeconomics as *an interdisciplinary research program which goal is to build a biological (neural) model of decision making in economic environments*. Małecka refers to the number of experiments from which different branches of law may benefit: contract law, property law, corporate law, and public law. Even though the insights may be interesting, she admits that to this day, neuroeconomics cannot offer a coherent alternative to rational choice theory. The topic has not gained widespread recognition among Polish L&E scholars either.

⁸ It was not the first publication to aim to familiarize Polish readers with the topic; see, for instance, Nieborak (2012).

as prohibitions on reselling goods at inflated prices (including ticket reselling), bans on certain categories of conduct altogether (e.g., trade in human body parts), as well as instruments like judicial injunctions and bank guarantees, can be coherently defended from a behavioral L&E perspective.

Małecka (2011, 2013) argued that L&E alone is insufficient when analyzing people's decisions in response to regulations. According to her, the rationality assumption is too strong and needs to be relaxed to accommodate more behavioral approaches. She claimed (like Zyzik but more generally) that Petrażycki's theories may be incorporated into behavioral L&E. Unfortunately, she did not present any empirical evidence to support her position, relying solely on theoretical analysis.

4.5. Judges' incentives, motivation, and productivity

The effectiveness of the judiciary, judges' motivations, and incentives are being explored more and more by Polish scholars. This strand of the literature is particularly empirical and internationalized, which is uncommon in L&E⁹. Additionally, most works in this domain are written in English. All of the papers we summarize in this section have been published in English (except for Joński, 2017, which is a report published by the Polish Institute of Justice).

Mikłaszewicz (2013) remarked on the incentives for national judges to seek a preliminary ruling from the Court of Justice of the European Union (ECJ). He was appointed as a *Référéndaire* to the ECJ in 2009, and therefore his insights may be particularly valuable. He discussed many factors that may contribute to their utility function, including reputation, popularity, and the exercise of power. Seeking a ruling from the ECJ may undermine a judge's reputation, but it may also empower them *vis-à-vis* the higher national court if the interpretation is consistent with the judge's view. A preliminary ruling may also diminish the utility of exercising judicial power, since it is binding. Seeking a preliminary ruling usually gives the judge much more time before he or she must make a decision, and even then, he or she is guided by the obtained ruling. It allows the judge more leisure time, thereby increasing utility. Unfortunately, Mikłaszewicz does not provide any quantitative analysis to support his claims. Also, he does not stress which incentives are the most important, limiting himself to identifying them.

Joński (2017) analyzed the effects of introducing judge assistants, who serve as supplementary clerks supporting judges in their work. Such assistants usually offer substantive aid, such as drafting selected legal documents, conducting case analysis, reviewing literature and cases, and answering unofficial queries about the case. Intuitively, assigning such an assistant to a judge should have increased their productivity. However, Joński did not find such a relationship. At the aggregated level (court departments), he examined the interdependence between the assistant-judge ratio and the number of cases resolved. He could not study the effects on individual judges' levels, nor could he incorporate a better measure of productivity (such as applying different weights to cases based on their complexity). Joński

⁹ Except for constitutional L&E.

suggested that a new randomized controlled trial would be needed to answer the research question more convincingly.

Banasik et al. (2022) examined, according to Polish judges, the factors that affect their productivity and career choices. To identify potential factors, they first conducted a thorough literature review, including Posner's view of the judge as a utility maximizer. Then they sent out more than 200 questionnaires to all active judges in the selected districts. To gain more insight, they also conducted ten interviews with the judges. Among the motives behind their career choices, the judges selected mainly the stability of employment and their prestige followed by the relatively high remuneration and social recognition. The study was rather inconclusive about judges' productivity, suggesting that the sense of mission is the main factor.

Beldowski et al. (2020) analyzed the determinants of performance and efficiency of first-instance commercial district courts in Poland using a rich panel dataset covering the years 2009–2016. Employing linear regression, panel data models, and stochastic frontier analysis, the authors examined how judicial staffing, caseload, auxiliary staff, and regional economic conditions affect the number of resolved cases. Their results show that commercial courts are largely demand-driven: the number of newly filed cases is the main determinant of output (cases resolved). However, unlike much of the earlier literature, the study finds that the number of judges does matter for performance in cases requiring a full court trial, where an increase in the number of judges leads to a statistically significant increase in resolved cases. In contrast, the number of judges has no significant impact on simplified writ-of-payment or non-litigious cases, which are instead influenced by auxiliary staff, particularly court clerks and judge assistants. The efficiency analysis further indicates that court performance is shaped by both internal organizational factors and external regional economic conditions (such as income *per capita* and the share of privately owned enterprises among all firms in the region).

Świtła (2024) examined judicial effectiveness by proposing the probability of appeal as a proxy measure, using a large corpus of regional court judgments in Poland (over 84,000)¹⁰. He applied the BERTopic algorithm (an unsupervised learning method for grouping texts) to thematically classify judgments issued between 2007 and 2022. The obtained groups (such as third-party liability insurance, traffic offenses, termination of employment contracts, alimony, etc.) were studied and compared based on observed appeal rates. The analysis showed that cases clustered within homogeneous legal domains – such as civil, labor, or criminal law – exhibit relatively similar appeal rates. Criminal law topics exhibit systematically higher appeal rates than any other topics. Judgments on family matters are appealed the least frequently. While the paper provides rich descriptive evidence and introduces an innovative methodology combining legal text analysis with performance metrics, its reliance on correlations and the appeal rate as a proxy limits causal interpretation

¹⁰ The data was obtained from the System of Analysis of Court Decisions available online at saos.org.pl. It is a largely underutilised source; therefore, further natural language processing of judgments may yield more groundbreaking L&E research.

and leaves open questions regarding the normative interpretation of appeals as indicators of effectiveness.

4.6. Regulatory Impact Assessment

Finally, it is worth highlighting the ongoing research and the growing body of literature on RIA¹¹ in connection with L&E. Links between the two have been explored for some time now. Rogowski & Szpirnger (2007, pp. 11-13) even claimed that L&E is the sole method utilized during RIA. In other words, RIA would be the practical application of L&E in the legislative process. Orłowski (2007, p. 32) placed the L&E approach to RIA as one among a few options: experimental methods, qualitative approaches, and ethical and philosophical analysis.

There are, however, institutions focused on RIA which function in conjunction with L&E. One example may be the Allerhand Institute, which devotes significant attention to RIA and the L&E perspective. Among other initiatives, the Institute biannually publishes a journal which features articles on both legal and economic issues, such as inflation of law (Rogowski, 2018) and taxation (Lipka, 2024). The Regulatory Impact Assessment Centre at the Faculty of Law and Administration of the University of Warsaw, established in 2022, also draws on the L&E tradition (Koźmiński et al., 2024, p. 7). However, practice appears to lag behind these declarations: among the 28 experts affiliated with the Centre, only one holds a PhD in Economics (COSR, n.d.)¹². Some scholars entirely omit L&E in their analysis of impact assessment (Górski, 2015; Adamowski, 2015). Others refer to the L&E approach to studying law in terms of impact assessment only broadly (Gajewski & Joński, 2022; Joński & Rogowski, 2023). Therefore, at this stage of research, Polish scholars do not concur on how to treat and use L&E in the context of RIA.

4.7. Miscellaneous empirical L&E

Given the growing body of literature, it is difficult to categorize all publications clearly. There are some forerunner articles in Polish L&E, such as analyses of the pension system and book market regulations, while other publications are unique, such as those examining whether L&E research can prevent a financial crisis. Here, we briefly summarize a few interesting papers that did not fit into the above categories but are worth presenting for their novelty and quality.

Paczocha & Rogowski (2011) conducted an initial quantitative analysis of the number of legal acts containing various regulatory provisions likely affecting how

¹¹ Sometimes it is placed within a broader concept of better regulation.

¹² Nonetheless, the Centre has produced around 30 opinions with the analysis of anticipated consequences of the adoption of particular legislative solutions and identifying their social and economic costs and benefits. Apart from lawyers (both practicing and theorizing) in various fields of law (including criminal, civil, tax, banking, constitutional, administrative, commercial, and family law), the Centre cooperates with researchers representing other social sciences (including economics, sociology, psychology, political science) and quantitative sciences (like mathematics or computer science).

business is done in Poland. They published their findings in English. Starting with the theoretical background on economic freedom, they hypothesize that excessive oversight in the part of the state over economic activity may be superfluous and negatively impact both social and economic conditions in Poland. Subsequently, they quantify the number of restrictions in Polish law during 1989-2009. These were mainly concessions, permits, and notifications. Additionally, there were regulated professions, production and trade restrictions, licensed business activities, and regulations on the operations and admission of goods to markets. Although the authors performed the daunting tasks of counting each restriction, their analysis does not assess their impact on production, unemployment, or the level of prices.

Kula & Ruzik-Sierdzińska (2012) conducted an econometric study (published in English) on the retirement decisions of the Polish elderly in response to the pension system reforms introduced. They identified eleven substantial changes over the period from 1995 to 2009. The results, however, mainly indicate the importance of variables unaffected directly by the reforms. For instance, the financially worse-off and disabled tended to retire later than the rest of the population. Also, having a spouse was associated with earlier retirement. Eligibility for a pre-retirement benefit lowered the age of retirement. The hypothesis that a high number of changes in a pension law introduced uncertainty to retirement decisions was not verified.

Maciejewski (2018) compared the advantages and disadvantages of introducing fixed book prices in a legal act. He devised a simple economic model and analyzed a few real-world examples, including France, Germany, the United Kingdom, and Israel. He concluded that while the policy may seem ineffective, there are other benefits that may outweigh the social costs, such as stability for publishers and bookshops or a wider variety of books placed on the market.

Lewkowicz (2018b) made a bold claim that more L&E research could have alleviated or limited the scope and severity of the Global Financial Crisis (GFC). Lack of cooperation between legal and economic scientists, however, stifled the research, which theoretically could *predict* market crashes. Lewkowicz argued that L&E should analyze current regulations with a focus on the incentives they induce. Those incentives, consequently, clearly lead to specific economic and social outcomes, for instance, a pumping of the housing market. Interestingly, Chojna-Duch (2015) similarly claimed that L&E may be useful for studying the GFC and its repercussions. While Lewkowicz focused on the L&E approach to prevent crises, she argued that only understanding the economic background of the crisis enables lawyers to delve in depth into post-crisis regulations (such as Sixpack, Twopack, the Fiscal Compact, or the European Stability Mechanism).

5. L&E – obstacles and barriers in Poland

Despite the above-mentioned circumstances confirming the generally positive development trends of L&E in Poland, there are also specific barriers and obstacles to this process. We describe them not to excuse those Polish scholars who deliberately

understate L&E as an approach to legal matters, but to help the international reader better understand the Polish context.

One should note the strong influence of legal positivism in the Polish legal tradition, reflected in legal education, scientific literature, and court decisions. There are several statements confirming this fact, for example: *in the Polish legal theory throughout the 20th century, the most influential school of thought, both in the theory and practice of lawmaking, was undoubtedly legal positivism. Positivism has been so predominant that it is difficult to speak of it as a legal philosophy - it has rather become the basic conceptual scheme of the Polish legal culture (...) The Law & Economics movement, which originated in the United States in the late 1950s, has remained relatively unknown in Poland till a few years ago (...) As we mentioned, the economic analysis of law has a very limited influence on the Polish legal practice, both at the level of legislative procedure and adjudication* (Brożek et al., 2012, p. 77-78). It seems that R. Alexy was right in the characterization that *the Polish analytical tradition in legal philosophy with its concentration on logic, epistemology, and methodology, is wide-ranging and profound (...) analytical rigor* (Alexy, 2014, p. 245) – instead of focusing on *economic-business* categories such as efficiency, effectiveness, profit, and the predominance of benefits over costs. Additionally, some considerations by selected representatives of American L&E (e.g., G. Becker) may raise moral, ethical, and ideological objections among lawyers (Koźmiński, 2016, pp. 34-60).

In other words, for the average Polish lawyer and most academics, the concept of Hans Kelsen or the Lwów-Warsaw School may be intellectually closer for example, than Ronald Coase or Richard Posner. For them, a more natural approach may be a formal-dogmatic method of interpreting the law rather than seeking a solution based on efficiency, for example. For the average “traditional” Polish lawyer, it may be more convenient to rely solely on the legal text rather than considering its socio-economic effects (Ziemiński, 1987, p. 40). Such statements are confirmed by the empirical research on the predominant methods used by Polish legal scholars. A dominant part (over 80%) of Polish legal texts contains the legal-dogmatic method, while others are usually used only supplementarily (Kędzierski, 2018, pp. 12-13).

Regardless of being strongly inspired by legal positivism, probably as a result of the influence of Western European continental legal cultures on the Polish legal tradition, several decades of communism and the then-formally declared Marxist theory of law were certainly an important experience. For Marx and Engels and other proponents of the Marxist theory of law, law, as an element of the *superstructure*, is of a secondary nature, secondary to the economy and economic relations (the *base*). Consequently, legal norms and institutions are subordinated to the economy. These theories made it possible to build a totalitarian, undemocratic and anti-liberal system in Poland. Under this system human rights and individual freedoms were violated, and the economic system was state-owned, and centrally managed. As a result, despite significant differences between L&E and the Marxist theory of law, there have been mixed reactions to the postulate of subordinating law to economics.

Another reason why Polish courts rarely resort to the L&E, failing to analyze or attempt to estimate the effects of their own decisions, is the model of judicial education (focusing on legal knowledge), and the structure of university law studies

(where knowledge of regulations predominates, with courses in economics, business studies, or political economy being rare). Furthermore, the traditional model of a judicial career, in place for decades, assumes obtaining a judicial position through legal training immediately after completing an academic track, which means that few judges have previously practiced as business advisors, lawyers running law firms, or defense attorneys for financial fraudsters or taxpayers (Stawecki, 2007, p. 189). It has been pointed out for a long time now that academic lawyers are particularly isolated from representatives of other social sciences (Ehrlich, 1965, p. 64-65), deepening the phenomenon of insufficient internal and external integration of sciences (Opalek 1968, p. 10). The inclusion of L&E subjects in Polish universities may partially address this issue in the future.

6. Summary

To conclude, the L&E movement has been developing rapidly in Poland. Particularly flourishing areas of research include civil and criminal law, with many papers on constitutional matters, behavioral L&E, and the effectiveness of the judiciary. This is despite the 'difficult' past and not necessarily favorable present, including: the strong influence of the tradition of legal positivism, the experience of partitions, the direct impact of foreign legal systems on Polish law, and the period of communism¹³. In Poland, there were activities (scientific congresses, academic journals) and scholars (Leon Petrażycki) that may be said to have formed the first wave of L&E. The second wave started in the 1980s, and the period of 2000-2010 meant the growth and the popularization of the movement. Since around 2010, we have observed the mature L&E movement in Poland.

Currently, we note growing interest in L&E. Research is booming, L&E courses are taught at universities, and the Polish Association of Law and Economics regularly organizes a conference on this subject. While many L&E publications are theoretical (and some even superficial), there is a growing body of empirical research. Scholars use simple statistical tests, as well as econometric estimations and machine learning approaches. We believe that empirically oriented studies are the key to the further development of L&E in Poland. The Polish scholarly community does not require more articles introducing the topic. With the translation of the seminal textbook by Cooter & Ulen and the adaptation of the monograph by Schäfer & Ott, the Polish reader can easily become acquainted with L&E.

We hope that in the next dozen or so years, there will be further interest in L&E, resulting in publications and legal and economic subjects becoming increasingly common in law studies curricula, and Poland becoming an even more attractive place for scientific conferences, internships, and scientific projects on L&E issues.

¹³ During that time, the Marxist theory of law was officially adopted at universities and impacted courts' decisions.

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Appendix 1

Founding members of the Polish Association of Law and Economics: Jarosław Bełdowski, Łukasz Boberek, Jacek Czabański, Łukasz Gorywoda, Agnieszka Jańczuk, Aneta Matosek, Katarzyna Metelska-Szaniawska, Przemysław Mikłaszewicz, Michał Olender, Adam Opalski, Tomasz Siemiątkowski, Rafał Stroiński, Tomasz Szczurkowski, Bartosz Targański, Krzysztof Wiater.

Appendix 2

Official research grants towards L&E studies in Poland

- “Economic Analysis of Law”; GRANT 1H02A 011 27; <https://ludzie.nauka.gov.pl/ln/profiles/4UIFlhsU4FW/projects/200547>.
- “Economic analysis of a libertarian legal system”; 2023/51/B/HS5/01359; https://projekty.ncn.gov.pl/en/index.php?projekt_id=606991
- “Tax authorities and administrative courts during the business cycle - Law&Economics perspective”; 2018/29/B/HS5/00260; https://projekty.ncn.gov.pl/en/index.php?projekt_id=410117
- “The problem of the justification of proxy criminalization: An economic analysis”; 2018/28/T/HS5/00322 & 2016/23/N/HS5/00928 ; https://projekty.ncn.gov.pl/en/index.php?projekt_id=402361; https://projekty.ncn.gov.pl/en/index.php?projekt_id=356068
- “Economics of Compliance with Constitutions”; 2016/23/G/HS4/04371; https://projekty.ncn.gov.pl/en/index.php?projekt_id=349702
- “The cost of criminal proceedings in the light of the economic analysis of law”; 2015/19/B/HS5/01217; https://projekty.ncn.gov.pl/en/index.php?projekt_id=309768
- “The influence of heuristics upon judicial decisions from the perspective of behavioural law and economics”; 2015/17/B/HS5/00495; https://projekty.ncn.gov.pl/en/index.php?projekt_id=294965;
- “Scientific legal policy from the perspective of behavioural law and economics”; 2015/17/D/HS5/00453; https://projekty.ncn.gov.pl/en/index.php?projekt_id=289842
- “Free legal aid in Poland in the light of law and economics. Current state and recommended reforms”; 2012/07/B/HS4/02994; https://projekty.ncn.gov.pl/en/index.php?projekt_id=204676
- “Constitutional Rules, Economic Policy, and Economic Outcomes”; 2011/03/B/HS4/01343; https://projekty.ncn.gov.pl/en/index.php?projekt_id=166381